

IN THE WATER COURT OF THE STATE OF MONTANA
LOWER MISSOURI DIVISION
MUSSELSHELL RIVER ABOVE ROUNDUP BASIN (40A)
PRELIMINARY DECREE

* * * * *

CLAIMANT: M&W Ranch LLC

OBJECTOR: M&W Ranch LLC

CASE 40A-0361-R-2022

40A 205260-00

40A 205262-00

40A 205263-00

40A 205264-00

40A 205265-00

40A 205269-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

Water Right Claims 40A 205260-00, 40A 205262-00, 40A 205263-00, 40A 205264-00, 40A 205265-00, and 40A 205269-00 appeared in the Preliminary Decree for

the Musselshell River, above Roundup (Basin 40A). These claims received issue remarks, except Claim 40A 205263-00. Issue remarks result from Department of Natural Resources and Conservation (“DNRC”) claims examination or by Water Court order. Claims examination confirms the historical use of water right claims and identifies issues with claims. If claims examination cannot confirm some aspect of a claim, an issue remark is added to the claim. Several of these claims also received self-objections filed by Claimant.

The Court consolidated these claims into Water Court Case 40A-0361-R-2022 on May 19, 2022. The consolidation order set a filing deadline by which Claimant was to file information resolving the issue remarks and objections. Claimant filed a response on August 15, 2022.

FINDINGS OF FACT

1. Claim 40A 205260-00 appeared with the following issue remark:

THE CLAIMED FLOW RATE EXCEEDS THE 17 GPM PER ACRE GUIDELINE AND CANNOT BE CONFIRMED DUE TO LACK OF DATA. THE FLOW RATE EQUALS 21.00 GPM PER ACRE.

2. Claim 40A 205262-00 appeared with the following issue remarks:

THIS CLAIM PRESENTS ISSUES OF FACT AND LAW THAT MAY BE ADDRESSED AT THE OBJECTION STAGE. IT APPEARS THAT 211 ACRES ARE ACTUALLY IRRIGATED AND PROBLEMS COULD EXIST WITH FLOW RATE AND VOLUME.

THE POINT OF DIVERSION APPEARS TO BE INCORRECT. THE POINT OF DIVERSION APPEARS TO BE IN GOVT LOT 15 IN THE NE SEC 4 TWP 6N RGE 13E WHEATLAND COUNTY.

3. Claim 40A 205264-00 appeared with the following issue remarks:

ON MARCH 26, 2008 THE CLAIMANTS FILED A REQUEST TO CHANGE THE PERIOD OF USE. THIS WAS DEEMED AND DOCKETED AS A LATE OBJECTION. THIS WILL BE HEARD AFTER PROPER NOTICE ON THE NEXT OBJECTION LIST.

THIS CLAIM PRESENTS ISSUES OF FACT AND LAW THAT MAY BE ADDRESSED AT THE OBJECTION STAGE. IT APPEARS THAT 211 ACRES ARE ACTUALLY IRRIGATED AND PROBLEMS COULD EXIST WITH FLOW RATE AND VOLUME.

THE POINT OF DIVERSION APPEARS TO BE INCORRECT. THE POINT OF DIVERSION APPEARS TO BE IN GOVT LOT. 15 IN THE NE SEC 4 TWP 6N RGE 13E WHEATLAND COUNTY.

4. Claim 40A 205265-00 appeared with the following issue remarks:

ON MARCH 26, 2008 THE CLAIMANTS FILED A REQUEST TO CHANGE THE PERIOD OF USE. THIS WAS DEEMED AND DOCKETED AS A LATE OBJECTION. THIS WILL BE HEARD AFTER PROPER NOTICE ON THE NEXT OBJECTION LIST.

THE POINT OF DIVERSION APPEARS TO BE INCORRECT. THE POINT OF DIVERSION APPEARS TO BE IN GOVT LOT 15 IN THE S2NE SEC 3 TWP 6N RGE 13E WHEATLAND COUNTY.

5. Claim 40A 205269-00 appeared with the following issue remarks:

THE POINT OF DIVERSION APPEARS TO BE INCORRECT. THE POINT OF DIVERSION IS EITHER IN GOVT LOT 15 IN THE NE SEC 4 TWP 6N RGE 13E WHEATLAND COUNTY (BRYAN DITCH) OR IN GOVT LOT 14 IN THE NW SEC 4 TWP 6N RGE 13E WHEATLAND COUNTY (WILLIAMS DITCH).

THE PLACE OF USE APPEARS TO BE INCORRECT. THE PLACE OF USE APPEARS TO BE IN EITHER THE N2 SEC 3 TWP 6N RGE 13E WHEATLAND CO (BRYAN DITCH) OR THE W2 AND SE SEC 3 TWP 6N RGE 13E WHEATLAND COUNTY (WILLIAMS DITCH).

6. Claimant objected to all elements of each above-captioned claim except Claim 40A 205269-00.

Point of Diversion and Place of Use Corrections

7. Claimant indicates agreement with the DNRC's proposed point of diversion description for Claim 40A 205265-00.

8. The point of diversion for Claim 40A 205265-00 should be described as:

<u>ID</u>	<u>Govt lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	15	S2NE	3	6N	13E	WHEATLAND

9. Claimant states the DNRC's proposed point of diversion descriptions for Claims 40A 205262-00 and 40A 205264-00 are incorrect. Claimant refers to an overlay of the 1877 Patent Survey for T6N, R13E over the relevant location in the Water Resource Survey to demonstrate the Bryan Ditch Headgate is in Government Lot 10 of Section 4, T6N, R13E.

10. The point of diversion of Claims 40A 205262-00 and 40A 205264-00 should be described as:

<u>ID</u>	<u>Govt lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	10	NE	4	6N	13E	WHEATLAND

11. Claimant states that Claim 40A 205269-00 is for a right conveyed through the Bryan Ditch. As discussed above, the Bryan Ditch point of diversion is in Government Lot 10 of Section 4, T6N, R13E. Claimant requests the place of use be corrected to N2 of Section 3, T6N, R13E as suggested by the DNRC issue remark.

12. The point of diversion of Claim 40A 205269-00 should be described as above and the ditch name should be Bryan Ditch and the place of use should be described as:

<u>ID</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	N2	3	6N	13E	WHEATLAND

Period of Diversion and Period of Use Amendments

13. Claimant states the following regarding Claims 40A 205262-00 and 40A 205263-00:

The above listed Claims were previously adjudicated in Case 40A-264. In that case, the Water Master ordered the Period of Use for 40A 205262-00 and 40A 205263-00 to be March 1 to November 19. *See*, Master's Report filed March 8, 2011, at FOF 44, attached as Exhibit G. Because these are direct flow rights, the period of diversion should match the period of use. *See Id.*, at COL 14. These changes were not reflected in the Preliminary Decree for Claim 40A 205262-00. Additionally, Claim 40A 205263-00 appeared in the Preliminary Decree with the correct Period of Diversion of March 1 to November 19 but was missing a Period of Use. Therefore, M&W respectfully requests this Court to amend the Periods of Diversion and Periods of Use elements to reflect the Order in Case 40A-264, whereby both claims reflect a Period of Diversion and Period of Use of March 1 to November 19. *See*, Proposed Post Decree Abstracts, attached as Exhibits D and H.

14. The period of use and period of diversion of Claims 40A 205262-00 and 40A 205263-00 should be described as March 1 to November 19.

15. Claimant states that the late objections to Claims 40A 205264-00 and 40A 205265-00 were filed to correct the periods of use and diversion of each claim. Claimant requests the period of use and period of diversion of Claims 40A 205264-00 and 40A 205265-00 should be described as March 1 to November 19.

16. Claimant states that the period of diversion for Claim 40A 205260-00 should be modified to January 1 to December 31 to reflect the historical practice of diverting and storing water into the Martin & C-J Reservoir on a year-round basis.

17. The period of diversion for Claim 40A 205260-00 should be described as January 1 to December 31.

Information Remark on Claim 40A 205263-00

18. Claim 40A 205263-00 appeared with the following information remark:
THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT CLAIM
OVERLAPPING PLACES OF USE. THE WATER COURT DECREES THIS RIGHT
AND MAKES ALL CLAIMS A MATTER OF RECORD: 205263-00, 205267-00,
205268-00.

19. Claim 40A 205267-00 was withdrawn pursuant to a stipulation filed in Case 40A-264. Accordingly, Claimant requests the Court remove Claim 40A 205267-00 from the above-referenced remark.

Flow Rate Issue Remark on Claim 40A 205260-00

20. Claim 40A 205260-00 is for a decreed water right. Additional evidence is not included with the DNRC issue remark indicating the claimed flow rate exceeds the guideline.

Irrigated Acres Issue Remarks

21. Claimant argues the following regarding the claimed acreage of Claims 40A 205262-00 and 40A 205264-00:

The Maximum Acres element of both claims is 233.00 Acres. According to the DNRC Claims Examination manual, if the examined acres fall within the contact points for the claimed acres, the claim should not receive an issue remark and the acres should remain as claimed. According to the contact point equation in W.R.C.E.R. Ch. VII, D.1.b, the contact points for 233.00 acres, claimed by 40A 205262-00, are 211.94 to 254.06, and the contact point for 232 acres, as claimed by 40A 205264-00, is between 211.00 and 253.00. Because the number of examined acres by the DNRC, 211, is within the contact point for 40A 205264-00 and only within one acre of the contact point for 40A 205262-00, the remarks related to the acres irrigated does not overcome the prima facie status of the Statements of Claim and should be removed from both 40A 205262-00 and 40A 205264-00.

22. The issue remarks should be removed from each above-captioned claim.

APPLICABLE LAW

1. A properly filed statement of claim is prima facie proof of its content. Section 85-2-227, MCA. The prima facie status of a claim may be overcome by a preponderance of the evidence. Section 85-2-227, MCA; Rule 19, W.R.Adj.R. A preponderance of the evidence is evidence that shows a fact is “more probable than not.” *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 438, 240 P.3d 628.

2. The Water Court must weigh an issue remark, and the information resulting in that issue remark, against the claimed water right. Section 85-2-247(2), MCA.

3. The Water Court must resolve all issue remarks not resolved through the objection process. Section 85-2-248, MCA. The Court must review information in the claim file or obtained by the Court to determine if there is a sufficient basis to resolve the remarks. 85-2-248(3), MCA.

4. The Montana Water Court has a statutory obligation and the exclusive authority to adjudicate claims of existing water rights. Rule 1, W. R. Adj. R. An existing water right is a right to the use of water that would be protected under the law as it existed prior to July 1, 1973. Rule 2(a)(22), W.R.C.E.R.

5. The Water Court has the authority to hear all objections to the elements of any claim included in a Court issued Temporary Preliminary Decree or Preliminary Decree. Section 85-2-233, MCA.

CONCLUSIONS OF LAW

1. The changes described in the Findings of Fact may be made because the evidence in the record overcomes the prima facie status of each relevant claim by a preponderance of the evidence.

2. The evidence in the record and the proposed changes provide the Court with a sufficient basis to resolve and remove the issue remarks from the above-captioned claims.

3. Claim 40A 205260-00 may be decreed without modification to the claimed flow rate because the issue remark does not overcome the prima facie status of the claim. Similarly, the place of use of Claims 40A 205262-00 and 40A 205264-00 may be decreed without modification because the issue remark on each claim does not overcome the prima facie status of the claim.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusions of Law, this Master recommends that the Court make the changes specified in the Findings of Fact to correct the Preliminary Decree for this Basin. Post-decree Abstracts of Water Right Claims are served with this Report to confirm the recommended changes have been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service Via Electronic Mail:

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Note: Service List Updated 2-1-23

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MUSSELSHELL RIVER, ABOVE ROUNDUP
BASIN 40A

Water Right Number: 40A 205260-00 STATEMENT OF CLAIM
Version: 4 -- POST DECREE
Status: ACTIVE

Owners: M&W RANCH LLC
PO BOX 235
TWO DOT, MT 59085 0235

Priority Date: OCTOBER 15, 1927

Type of Historical Right: DECREED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 12.50 CFS

Volume: 785.00 AC-FT

Climatic Area: 4 - MODERATELY LOW

***Maximum Acres:** 273.00

Source Name: BIG ELK CREEK

Source Type: SURFACE WATER

THE SOURCE INCLUDES UNNAMED TRIBUTARIES OF BIG ELK CREEK WHICH FLOW DIRECTLY INTO MARTIN & C-J RESERVOIR.

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NESENW	6	6N	13E	WHEATLAND

***Period of Diversion:** JANUARY 1 TO DECEMBER 31

Diversion Means: HEADGATE

Ditch Name: SHEETZ DITCH NO.3

Reservoir: OFFSTREAM **Reservoir Name:** MARTIN & C-J RESERVOIR

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	S2	31	7N	13E	WHEATLAND

Diversion to Reservoir: DIVERSION # 1

Dam Height: 19.00 FEET

Depth: 16.00 FEET

Surface Area: 66.80 ACRES

Capacity: 440.32 ACRE-FEET

***Period of Use:** MARCH 1 TO NOVEMBER 19

***Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	52.00		NW	2	6N	13E	WHEATLAND

2	221.00	N2	3	6N	13E	WHEATLAND
Total:	273.00					

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

205260-00	205262-00	205263-00	205264-00	205265-00
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THE STIPULATION FILED ON FEBRUARY 11, 2002 IN CASE 40A-264 INCLUDES THE FOLLOWING PROVISION: "FOR PURPOSES OF ENFORCING THE BIG ELK DECREE, THE MEANS OF DIVERSION OF ALL PARTIES SHALL BE LIMITED TO THE CARRYING CAPACITY OF THE DITCHES AT THE POINT OF DIVERSION EXISTING AS OF THE DATE OF THIS STIPULATION." A COPY OF EACH PARTY'S STATEMENT HAS BEEN ADDED TO THAT PARTY'S CLAIM FILES.

THE STIPULATION FILED ON FEBRUARY 14, 1997 IN CASE 40A-264 INCLUDES THE FOLLOWING PROVISION: THE OWNER OF RIGHT 40A 205260-00 MAY DIVERT ADDITIONAL WATER AT THE POINTS OF DIVERSION SHOWN FOR RIGHTS 40A 205262-00, 40A 205263-00, 40A 205264-00, AND 40A 205265-00 IN WHICH EVENT THE OWNER SHALL RELEASE AN EQUIVALENT FLOW OF WATER FROM THE RESERVOIR ASSOCIATED WITH RIGHT 40A 205260-00. THIS RELEASED WATER MAY NOT BE DIVERTED THROUGH ANY DIVERSION BETWEEN THE RESERVOIR AND THE CONFLUENCE OF CROOKED CREEK WITH BIG ELK CREEK.

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MUSSELSHELL RIVER, ABOVE ROUNDUP
BASIN 40A

Water Right Number: 40A 205262-00 STATEMENT OF CLAIM
Version: 4 -- POST DECREE
Status: ACTIVE

Owners: M&W RANCH LLC
PO BOX 235
TWO DOT, MT 59085 0235

Priority Date: JUNE 1, 1946

Type of Historical Right: USE

Purpose (use): IRRIGATION
Irrigation Type: FLOOD

Flow Rate: 2.50 CFS

***Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 4 - MODERATELY LOW

Maximum Acres: 233.00

Source Name: CROOKED CREEK
Source Type: SURFACE WATER

***Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	10	NE	4	6N	13E	WHEATLAND

***Period of Diversion:** MARCH 1 TO NOVEMBER 19

Diversion Means: HEADGATE

Ditch Name: BRYAN DITCH

***Period of Use:** MARCH 1 TO NOVEMBER 19

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	32.00		NWNW	2	6N	13E	WHEATLAND
2	201.00		N2N2	3	6N	13E	WHEATLAND
Total:	233.00						

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

205260-00

205262-00

205263-00

205264-00

205265-00

THE STIPULATION FILED ON FEBRUARY 11, 2002 IN CASE 40A-264 INCLUDES THE FOLLOWING PROVISION: "FOR PURPOSES OF ENFORCING THE BIG ELK DECREE, THE MEANS OF DIVERSION OF ALL PARTIES SHALL BE LIMITED TO THE CARRYING CAPACITY OF THE DITCHES AT THE POINT OF DIVERSION EXISTING AS OF THE DATE OF THIS STIPULATION." A COPY OF EACH PARTY'S STATEMENT HAS BEEN ADDED TO THAT PARTY'S CLAIM FILES.

THE STIPULATION FILED ON FEBRUARY 14, 1997 IN CASE 40A-264 INCLUDES THE FOLLOWING PROVISION: THE OWNER OF RIGHT 40A 205260-00 MAY DIVERT ADDITIONAL WATER AT THE POINTS OF DIVERSION SHOWN FOR RIGHTS 40A 205262-00, 40A 205263-00, 40A 205264-00, AND 40A 205265-00, IN WHICH EVENT THE OWNER SHALL RELEASE AN EQUIVALENT FLOW OF WATER FROM THE RESERVOIR ASSOCIATED WITH RIGHT 40A 205260-00. THIS RELEASED WATER MAY NOT BE DIVERTED THROUGH ANY DIVERSION BETWEEN THE RESERVOIR AND THE CONFLUENCE OF CROOKED CREEK WITH BIG ELK CREEK.

THE STIPULATIONS FILED ON FEBRUARY 14, 1997 AND FEBRUARY 11, 2002 IN CASE 40A-264 INCLUDE THE FOLLOWING PROVISION: THE DIVERTED FLOW OF THE WATER RIGHTS LISTED BELOW MAY BE MARSHALED BETWEEN AND AMONG THE VARIOUS PLACES OF USE AND POINTS OF DIVERSION OF ANY OF THESE RIGHTS SO LONG AS SUCH MARSHALING DOES NOT ADVERSELY AFFECT ANY OTHER WATER RIGHT AND SO LONG AS THESE RIGHTS ARE HELD BY A COMMON OWNER: 40A 205262-00, 40A 205263-00 AND 40A 205264-00. IN THE EVENT THAT THE FLOW IN BIG ELK CREEK AND ITS TRIBUTARIES IS INSUFFICIENT TO SATISFY THE WATER RIGHTS HAVING A PRIORITY DATE PRIOR TO JULY 1, 1921, ALL RIGHTS TO MARSHAL WATER RIGHTS SHALL IMMEDIATELY CEASE.

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MUSSELSHELL RIVER, ABOVE ROUNDUP
BASIN 40A

Water Right Number: 40A 205263-00 STATEMENT OF CLAIM
Version: 4 -- POST DECREE
Status: ACTIVE

Owners: M&W RANCH LLC
PO BOX 235
TWO DOT, MT 59085 0235

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT CLAIM OVERLAPPING PLACES OF USE. THE WATER COURT DECREES THIS RIGHT AND MAKES ALL CLAIMS A MATTER OF RECORD. 205263-00, 205268-00.

Priority Date: MAY 5, 1969
Type of Historical Right: USE
Purpose (use): IRRIGATION
Irrigation Type: FLOOD
Flow Rate: 3.13 CFS
***Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.
Climatic Area: 4 - MODERATELY LOW
Maximum Acres: 118.00
Source Name: CROOKED CREEK
Source Type: SURFACE WATER

***Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	14	SWSWNE	4	6N	13E	WHEATLAND

***Period of Diversion:** MARCH 1 TO NOVEMBER 19

Diversion Means: HEADGATE

Ditch Name: WILLIAMS DITCH

***Period of Use:** MARCH 1 TO NOVEMBER 19

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	118.00		N2	3	6N	13E	WHEATLAND

Total: 118.00

THE PLACE OF USE IN SEC 3 TWP 6N RGE 13E IS MORE SPECIFICALLY DEFINED AS GOVERNMENT LOTS 5, 6, 7, 10, 11 AND 12.

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

205260-00

205262-00

205263-00

205264-00

205265-00

THE STIPULATION FILED ON FEBRUARY 11, 2002 IN CASE 40A-264 INCLUDES THE FOLLOWING PROVISION: "FOR PURPOSES OF ENFORCING THE BIG ELK DECREE, THE MEANS OF DIVERSION OF ALL PARTIES SHALL BE LIMITED TO THE CARRYING CAPACITY OF THE DITCHES AT THE POINT OF DIVERSION EXISTING AS OF THE DATE OF THIS STIPULATION." A COPY OF EACH PARTY'S STATEMENT HAS BEEN ADDED TO THAT PARTY'S CLAIM FILES.

THE STIPULATION FILED ON FEBRUARY 14, 1997 IN CASE 40A-264 INCLUDES THE FOLLOWING PROVISION: THE OWNER OF RIGHT 40A 205260-00 MAY DIVERT ADDITIONAL WATER AT THE POINTS OF DIVERSION SHOWN FOR RIGHTS 40A 205262-00, 40A 205263-00, 40A 205264-00, AND 40A 205265-00, IN WHICH EVENT THE OWNER SHALL RELEASE AN EQUIVALENT FLOW OF WATER FROM THE RESERVOIR ASSOCIATED WITH RIGHT 40A 205260-00. THIS RELEASED WATER MAY NOT BE DIVERTED THROUGH ANY DIVERSION BETWEEN THE RESERVOIR AND THE CONFLUENCE OF CROOKED CREEK WITH BIG ELK CREEK.

THE STIPULATIONS FILED ON FEBRUARY 14, 1997 AND FEBRUARY 11, 2002 IN CASE 40A-264 INCLUDE THE FOLLOWING PROVISION: THE DIVERTED FLOW OF THE WATER RIGHTS LISTED BELOW MAY BE MARSHALED BETWEEN AND AMONG THE VARIOUS PLACES OF USE AND POINTS OF DIVERSION OF ANY OF THESE RIGHTS SO LONG AS SUCH MARSHALING DOES NOT ADVERSELY AFFECT ANY OTHER WATER RIGHT AND SO LONG AS THESE RIGHTS ARE HELD BY A COMMON WATER RIGHT AND SO LONG AS THESE RIGHTS ARE HELD BY A COMMON OWNER: 40A 205262-00, 40A 205263-00, AND 40A 205264-00. IN THE EVENT THAT THE FLOW IN BIG ELK CREEK AND ITS TRIBUTARIES IS INSUFFICIENT TO SATISFY THE WATER RIGHTS HAVING A PRIORITY DATE PRIOR TO JULY 1, 1921, ALL RIGHTS TO MARSHAL WATER RIGHTS SHALL IMMEDIATELY CEASE.

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MUSSELSHELL RIVER, ABOVE ROUNDUP
BASIN 40A

Water Right Number: 40A 205264-00 STATEMENT OF CLAIM
Version: 5 -- POST DECREE
Status: ACTIVE

Owners: M&W RANCH LLC
PO BOX 235
TWO DOT, MT 59085 0235

Priority Date: JUNE 15, 1903

Type of Historical Right: DECREED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 3.48 CFS

***Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 4 - MODERATELY LOW

Maximum Acres: 232.00

Source Name: CROOKED CREEK

Source Type: SURFACE WATER

***Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	10	NE	4	6N	13E	WHEATLAND

***Period of Diversion:** MARCH 1 TO NOVEMBER 19

Diversion Means: HEADGATE

Ditch Name: BRYAN DITCH

Period of Use: MARCH 1 TO NOVEMBER 19

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	32.00		NWNW	2	6N	13E	WHEATLAND
2	200.00		N2N2	3	6N	13E	WHEATLAND
Total:	232.00						

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

205260-00

205262-00

205263-00

205264-00

205265-00

THE STIPULATION FILED ON FEBRUARY 11, 2002 IN CASE 40A-264 INCLUDES THE FOLLOWING PROVISION: "FOR PURPOSES OF ENFORCING THE BIG ELK DECREE, THE MEANS OF DIVERSION OF ALL PARTIES SHALL BE LIMITED TO THE CARRYING CAPACITY OF THE DITCHES AT THE POINT OF DIVERSION EXISTING AS OF THE DATE OF THIS STIPULATION." A COPY OF EACH PARTY'S STATEMENT HAS BEEN ADDED TO THAT PARTY'S CLAIM FILES.

THE STIPULATION FILED ON FEBRUARY 14, 1997 IN CASE 40A-264 INCLUDES THE FOLLOWING PROVISION: THE OWNER OF RIGHT 40A 205260-00 MAY DIVERT ADDITIONAL WATER AT THE POINTS OF DIVERSION SHOWN FOR RIGHTS 40A 205262-00, 40A 205263-00, 40A 205264-00, AND 40A 205265-00, IN WHICH EVENT THE OWNER SHALL RELEASE AN EQUIVALENT FLOW OF WATER FORM THE RESERVOIR ASSOCIATED WITH RIGHT 40A 205260-00. THIS RELEASED WATER MAY NOT BE DIVERTED THROUGH ANY DIVERSION BETWEEN THE RESERVOIR AND THE CONFLUENCE OF CROOKED CREEK WITH BIG ELK CREEK.

THE STIPULATIONS FILED ON FEBRUARY 14, 1997 AND FEBRUARY 11, 2002 IN CASE 40A-264 INCLUDE THE FOLLOWING PROVISION: THE DIVERTED FLOW OF THE WATER RIGHTS LISTED BELOW MAY BE MARSHALED BETWEEN AND AMONG THE VARIOUS PLACES OF USE AND POINTS OF DIVERSION OF ANY OF THESE RIGHTS SO LONG AS SUCH MARSHALING DOES NOT ADVERSELY AFFECT ANY OTHER WATER RIGHT AND SO LONG AS THESE RIGHTS ARE HELD BY A COMMON OWNER: 40A 205262-00, 40A 205263-00, AND 40A 206264-00. IN THE EVENT THAT THE FLOW IN BIG ELK CREEK AND ITS TRIBUTARIES IS INSUFFICIENT TO SATISFY THE WATER RIGHTS HAVING A PRIORITY DATE PRIOR TO JULY 1, 1921, ALL RIGHTS TO MARSHAL WATER RIGHTS SHALL IMMEDIATELY CEASE.

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MUSSELSHELL RIVER, ABOVE ROUNDUP
BASIN 40A

Water Right Number: 40A 205265-00 STATEMENT OF CLAIM
Version: 4 -- POST DECREE
Status: ACTIVE

Owners: M&W RANCH LLC
PO BOX 235
TWO DOT, MT 59085 0235

Priority Date: JUNE 15, 1890

Type of Historical Right: DECREED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 1.00 CFS

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 4 - MODERATELY LOW

Maximum Acres: 40.00

Source Name: UNNAMED TRIBUTARY OF BIG ELK CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	15	S2NE	3	6N	13E	WHEATLAND

***Period of Diversion:** MARCH 1 TO NOVEMBER 19

Diversion Means: HEADGATE

Period of Use: MARCH 1 TO NOVEMBER 19

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	20.00		NE	3	6N	13E	WHEATLAND
2	20.00		NW	2	6N	13E	WHEATLAND
Total:	40.00						

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

205260-00	205262-00	205263-00	205264-00	205265-00
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THE FEBRUARY 14, 1997 STIPULATION FILED IN CASE 40A-264 INCLUDES THE FOLLOWING PROVISION: THE OWNER OF RIGHT 40A 205260-00 MAY DIVERT ADDITIONAL WATER AT THE POINTS OF DIVERSION SHOWN FOR RIGHTS 40A 205262-00, 40A 205263-00, 40A 205264-00, AND 40A 205265-00, IN WHICH EVENT THE OWNER SHALL RELEASE AN EQUIVALENT FLOW OF WATER FROM THE RESERVOIR ASSOCIATED WITH RIGHT 40A 205260-00. THIS RELEASED WATER MAY NOT BE DIVERTED THROUGH ANY DIVERSION BETWEEN THE RESERVOIR AND THE CONFLUENCE OF CROOKED CREEK WITH BIG ELK CREEK.

THE STIPULATION FILED ON FEBRUARY 11, 2002 IN CASE 40A-264 INCLUDES THE FOLLOWING PROVISION: "FOR PURPOSES OF ENFORCING THE BIG ELK DECREE, THE MEANS OF DIVERSION OF ALL PARTIES SHALL BE LIMITED TO THE CARRYING CAPACITY OF THE DITCHES AT THE POINT OF DIVERSION EXISTING AS OF THE DATE OF THIS STIPULATION." A COPY OF EACH PARTY'S STATEMENT HAS BEEN ADDED TO THAT PARTY'S CLAIM FILES.

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MUSSELSHELL RIVER, ABOVE ROUNDUP
BASIN 40A

Water Right Number: 40A 205269-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: M&W RANCH LLC
PO BOX 235
TWO DOT, MT 59085 0235

Priority Date: JUNE 15, 1903

Type of Historical Right: DECREED

Purpose (use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: CROOKED CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	10	NE	4	6N	13E	WHEATLAND

Period of Diversion: OCTOBER 20 TO DECEMBER 1

Diversion Means: DITCH

Ditch Name: BRYAN DITCH

Period of Use: OCTOBER 20 TO DECEMBER 1

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			N2	3	6N	13E	WHEATLAND